

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE DEPARTMENT OF HEALTH

In the Matter of the Disqualification
Appeal of Mary Manthimba Massaquoi

**FINDINGS OF FACT,
CONCLUSIONS AND
RECOMMENDATION**

This matter came before Chief Administrative Law Judge Raymond R. Krause pursuant to a Notice and Order for Hearing dated September 8, 2011.

Audrey Kaiser Manka, Assistant Attorney General appeared on behalf of the Department of Health, (the Department). Respondent appeared on her own behalf without benefit of counsel. The hearing was held on October 26, 2011, and the OAH record closed on the same day.

STATEMENT OF THE ISSUES

1. Whether the Minnesota Department of Human Services, pursuant to Minn. Stat. § 245C.14, properly disqualified Respondent from an employment position allowing direct contact with persons receiving services from licensed programs and facilities licensed by the Department?¹

2. Whether the Department, upon reconsideration, correctly determined by a preponderance of the evidence that a preponderance of the evidence that Respondent committed an act that meets the definition of domestic assault, Minn. Stat. § 609.2242?

Based on the evidence in the hearing record, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. Respondent is employed by programs licensed by the Department as a direct care provider.²

2. Hennepin County Medical Center (HCMC) submitted an application for background check on Respondent as part of the job application process.³ The background check disclosed a prior criminal charge of misdemeanor domestic assault in

¹ Minnesota Statutes are cited to the 2010 edition.

² Testimony of Julie Frokjer.

³ Ex. 1.

2005.⁴ The charge was reduced to one of disorderly conduct and the district court imposed a stay of execution of a probationary sentence.⁵

3. On May 11, 2011, the Minnesota Department of Human Services notified Respondent that, as a result of her criminal record, she was disqualified from direct contact with, or access to, persons receiving service from the Department of Health or the Department of Human Services. The notification included information on Respondent's right to request reconsideration.⁶ The Department of Human Services contacted Respondent's employers and notified them of the disqualification. The letter to employers noted that Respondent could continue to work in her existing capacity while a request for reconsideration was pending.⁷

4. Respondent requested reconsideration.⁸ The Department conducted a "Preponderance of Evidence Review" of the case and determined that a domestic assault had occurred. The review concluded that the assault took place on December 19, 2005 and that the statutory seven-year disqualification would expire on January 5, 2013.⁹ The Department, therefore, did not rescind the disqualification.¹⁰

5. All of Respondent's recent job performance reviews were positive, indicating that she cares for her patients, is reliable, attentive, and knowledgeable.¹¹

6. Based on the material submitted with the Reconsideration request, the Department set aside the disqualification upon finding that Respondent posed no threat of harm to those with whom she had direct contact or access.¹²

7. On June 23, 2011, the Department notified Respondent that it had upheld the disqualification but had set aside the disqualification. This means that Respondent can continue to work at her current employers without restriction.¹³ On the same day, the Department notified Respondent's employers that the disqualification had been set aside.¹⁴

8. On July 12, 2011, Respondent timely requested a hearing to appeal the denial of her request for reconsideration.¹⁵

⁴ Exs. 1, 2, and 3.

⁵ Ex. 2.

⁶ Ex. 1.

⁷ Ex. 4.

⁸ Ex. 7.

⁹ Exs. 5 and 9.

¹⁰ Ex. 10.

¹¹ Ex. 8.

¹² Ex. 9.

¹³ Ex. 11.

¹⁴ Ex. 12.

¹⁵ Ex. 13.

9. The Department issued a Notice and Order for Hearing on September 8, 2011.¹⁶

Based on these Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. This matter is properly before the Department of Health and the Office of Administrative Hearings pursuant to Minn. Stat. §§ 245C.14, 245C.27 and 245C.28

2. The Department has complied with the procedural and notice requirements of statute and rule.

3. A person applying for employment with a licensed facility, agency, or program is subject to a background study pursuant to Minn. Stat. §245C.03.

4. The commissioner shall disqualify an individual who is the subject of a background study from any position allowing direct contact with persons receiving services from the license holder upon receipt of information showing a preponderance of the evidence that the individual has committed an act that meets the definition of any of the crimes listed in Minn. Stat. § 245C.15.¹⁷

5. An individual is disqualified under section 245C.14 if less than seven years has passed since discharge of a sentence, if any, and the individual has committed a misdemeanor-level violation of domestic assault.¹⁸

6. The commissioner shall rescind the disqualification if the commissioner finds that the information relied upon to disqualify the individual is incorrect.¹⁹

7. The commissioner may set aside the disqualification if the commissioner finds that the individual does not pose a risk of harm to any person served by the applicant.²⁰

8. The Department has shown by a preponderance of the evidence that Respondent has committed an act that meets the definitions in Minn. Stat. § 245C.15 as a misdemeanor violation. The initial disqualification and the denial of reconsideration were, therefore, proper.

9. The Department has determined that the Respondent poses no risk of harm to individuals served by Respondent and has set aside the disqualification.

¹⁶ Ex. 14.

¹⁷ Minn. Stat. § 245C.14, subd. 1(3).

¹⁸ Minn. Stat. § 245C.15, subd. 4.

¹⁹ Minn. Stat. § 245C.22, subd. 2.

²⁰ Minn. Stat. § 245C.22, subd. 4

Based upon these Conclusions, and for the reasons explained in the accompanying Memorandum, the Administrative Law Judge makes the following:

RECOMMENDATION

Based upon these Conclusions, the Administrative Law Judge recommends that:

The Disqualification of Respondent be AFFIRMED

Dated: November 8, 2011

s/Raymond R. Krause

RAYMOND R. KRAUSE
Administrative Law Judge

Reported: Digitally Recorded

NOTICE

This report is a recommendation, not a final decision. The Commissioner of Health (the Commissioner) will make the final decision after a review of the record. The Commissioner may adopt, reject or modify these Findings of Fact, Conclusions, and Recommendations. The parties have 10 calendar days after receiving this report to file Exceptions to the report. At the end of the exceptions period, the record will close. The Commissioner then has 90 working days to issue his final decision. Parties should contact Dr. Edward Ehlinger, Commissioner of the Department of Health, 625 Robert Street North, PO Box 64975, St. Paul, MN 55164-0975, (651) 201-5000 to learn the procedure for filing exceptions or presenting argument.

Under Minn. Stat. § 14.62, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail or as otherwise provided by law.

MEMORANDUM

The facts in this matter are not in dispute. Respondent and her husband engaged in a minor altercation which resulted in her arrest and eventual dismissal of her charge of domestic assault. She admits to the basic facts of the assault. Upon application for a job with a facility licensed by the Department of Health, the required background check turned up her domestic assault charge. The Department subsequently issued a disqualification order based on that charge.

The Department must disqualify a person upon a finding that the person committed an act that meets the definitions in Minn. Stat. § 245C.15. Respondent does not dispute the accuracy of the information that is the basis of the disqualification and

does not dispute that her act meets the definition of the statute. The initial disqualification is, therefore, proper.

The Commissioner must rescind a disqualification upon reconsideration if the Commissioner finds that the information upon which the disqualification is based is inaccurate. If it is accurate, the Commissioner must deny reconsideration. Again, Respondent does not dispute the underlying facts. Denial of reconsideration is, therefore, also proper.

The Department has found that the Respondent does not pose a risk of harm and has set aside the disqualification. While this does not satisfy Respondent, it does mean she can continue to work at her current jobs without hindrance. In addition, the disqualification expires on January 5, 2013. After that date there is no disqualification.

The Department followed the proper procedures and complied with the appropriate statutes. The disqualification should be affirmed.

R. R. K.